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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 775

CHECKER CAB COMPANY AND ITS MEMBERS, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITIONERS' REPLY MEMORANDUM

The Labor Board's Brief in Opposition is misleading in two significant respects—and contains a vital and perhaps determinative admission.

First. The Board quotes (Br. Op. 8) the concluding paragraph of the opinion below, to the effect that (Pet. App. A13) "a group of employers have banded themselves together so as to set up joint machinery for hiring employees, * * * for disciplining employees for violation of rules, for disciplining employees for violation of safety regulations * * *."

But the Board never quotes the subsidiary findings made by the court below that completely contradict the court's quoted conclusion, namely:

> "5. Each individual owner has final legal authority to hire and fire the drivers of his cabs." (Pet. App. A6.)
>
> * * * * *
>
> "4. The Checker Cab Company advertises for Checker drivers, requires them to apply at the Checker Cab Company office, where they are interviewed and investigated, and then *recommended* to individual cab-owner employers for employment." (Pet. App. A7; italics added.)
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> * * * * *
>
> "8. The Checker Cab Company also maintains a board of review composed of senior members which meets every week to consider complaints against the drivers, and which can and does *recommend* disciplinary measures and discharge of drivers to the owner-employer." (Pet. App. A7; italics added.)

The result is that, on the basis of concurrent findings, Checker has insufficient control over its members' drivers to make it the employer of those drivers—and yet under the decision sought to be reviewed Checker must now bargain with those drivers.

Second. Similarly, the Board's contention (Br. Op. 9-11) that its ruling does not nullify the independent contractor amendment is plainly misleading.

The Board does not now deny, nor has it ever denied, that Checker's members are independent contractors. It admits here, as it must, that none of Checker's employees drive cabs (Br. Op. 4, note 3). Yet it insists that Checker is properly included as a member of the employer bargaining unit to bargain with drivers who are employed by its independent contractor members, and that any Checker members who employ drivers must bargain with all the drivers employed by all the other members.

We submit that it would be difficult, indeed probably even impossible, to imagine a more palpable violation of the independent contractor amendment that Congress adopted in 1947.

Third. We said (Pet. 8) that the decision below had "predictable consequences that are industry-wide in character," and that (Pet. 16) this case's "consequences affect an entire industry."

The Board does not deny those assertions.

Accordingly, we reiterate our conviction that the decision below requires review by this Court.

Respectfully submitted.

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